

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CINDY APLING,)	
)	No. CV-05-0157-CI
Plaintiff,)	
)	ORDER DENYING PLAINTIFF'S
v.)	MOTION FOR SUMMARY JUDGMENT
)	AND DIRECTING ENTRY OF
JO ANNE B. BARNHART,)	JUDGMENT FOR DEFENDANT
Commissioner of Social)	
Security,)	
)	
Defendant.)	

BEFORE THE COURT are cross-Motions for Summary Judgment (Ct. Rec. 11, 15), submitted for disposition without oral argument on January 9, 2006. Attorney Lora Lee Stover represents Plaintiff; Special Assistant United States Attorney David M. Blume represents Defendant. The parties have consented to proceed before a magistrate judge. (Ct. Rec. 6.) After reviewing the administrative record and the briefs filed by the parties, the court **DENIES** Plaintiff's Motion for Summary Judgment.

Plaintiff, 42-years-old at the time of the administrative decision, filed an application for Supplemental Security Income benefits on October 19, 2001, alleging disability as of January 1, 1985, due to depression and loss of memory. (Tr. at 22.) The onset date was later amended by counsel to September 1, 2000. (Tr. at 22,

1 535.) Plaintiff had a high-school education, seventh grade math
2 skills, and past relevant work as a short order cook. Following a
3 denial of benefits at the initial stage and on reconsideration, two
4 administrative hearings were held before Administrative Law Judge
5 Mary B. Reed (ALJ). The ALJ denied benefits; review was denied by
6 the Appeals Council. This appeal followed. Jurisdiction is
7 appropriate pursuant to 42 U.S.C. § 405(g).

8 ADMINISTRATIVE DECISION

9 The ALJ concluded Plaintiff had not engaged in substantial
10 gainful activity since 1999. (Tr. at 32.) Plaintiff suffered from
11 severe degenerative joint disease (knees), cervical strain, obesity
12 and an affective disorder. (Tr. at 28.) These impairments,
13 however, were not found to meet the Listings. The ALJ rejected
14 Plaintiff's testimony as not fully credible. (Tr. at 28.) The ALJ
15 concluded Plaintiff retained the residual capacity to perform
16 sedentary work with only occasional bending, climbing, and stooping,
17 with no crouching, squatting or kneeling, and no working or reaching
18 overhead. Mentally she would be limited to understanding,
19 remembering and carrying out simple repetitive tasks learned through
20 demonstration. The ALJ also found she would also have the mild
21 limitations noted at Tr. 27, n.3. Based on the testimony of the
22 vocational expert, the ALJ found Plaintiff would have the ability to
23 perform other work which exists in significant numbers in the
24 national economy, including assembler, production inspector/checker,
25 and hand packer and packager. (Tr. at 32.) The ALJ concluded
26 Plaintiff was not disabled.

27 ISSUES

28 The question presented is whether there was substantial

1 evidence to support the ALJ's decision denying benefits and, if so,
2 whether that decision was based on proper legal standards.
3 Plaintiff contends the ALJ erred when she (1) improperly assessed
4 the testimony of the vocational expert who testified at the
5 supplemental hearing; (2) evaluated the effects of her mental
6 impairments based on the totality of the evidence; (3) assessed
7 Plaintiff's credibility; and (4) assessed her residual functional
8 capacity in light of both physical and mental impairments. The
9 first and second issues are addressed in combination, as are the
10 third and fourth.

11 STANDARD OF REVIEW

12 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the
13 court set out the standard of review:

14 The decision of the Commissioner may be reversed only if
15 it is not supported by substantial evidence or if it is
16 based on legal error. *Tackett v. Apfel*, 180 F.3d 1094,
17 1097 (9th Cir. 1999). Substantial evidence is defined as
18 being more than a mere scintilla, but less than a
19 preponderance. *Id.* at 1098. Put another way, substantial
20 evidence is such relevant evidence as a reasonable mind
21 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the
22 evidence is susceptible to more than one rational
23 interpretation, the court may not substitute its judgment
24 for that of the Commissioner. *Tackett*, 180 F.3d at 1097;
25 *Morgan v. Comm'r of Soc. Sec. Admin.* 169 F.3d 595, 599
(9th Cir. 1999).

26 The ALJ is responsible for determining credibility,
27 resolving conflicts in medical testimony, and resolving
28 ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
Cir. 1995). The ALJ's determinations of law are reviewed
de novo, although deference is owed to a reasonable
construction of the applicable statutes. *McNatt v. Apfel*,
201 F.3d 1084, 1087 (9th Cir. 2000).

26 SEQUENTIAL PROCESS

27 Also in *Edlund*, 253 F.3d at 1156-1157, the court set out the
28 requirements necessary to establish disability:

Under the Social Security Act, individuals who are "under a disability" are eligible to receive benefits. 42 U.S.C. § 423(a)(1)(D). A "disability" is defined as "any medically determinable physical or mental impairment" which prevents one from engaging "in any substantial gainful activity" and is expected to result in death or last "for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). Such an impairment must result from "anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques." 42 U.S.C. § 423(d)(3). The Act also provides that a claimant will be eligible for benefits only if his impairments "are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy" 42 U.S.C. § 423(d)(2)(A). Thus, the definition of disability consists of both medical and vocational components.

In evaluating whether a claimant suffers from a disability, an ALJ must apply a five-step sequential inquiry addressing both components of the definition, until a question is answered affirmatively or negatively in such a way that an ultimate determination can be made. 20 C.F.R. §§ 404.1520(a)-(f), 416.920(a)-(f). "The claimant bears the burden of proving that [s]he is disabled." *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir. 1999). This requires the presentation of "complete and detailed objective medical reports of h[is] condition from licensed medical professionals." *Id.* (citing 20 C.F.R. §§ 404.1512(a)-(b), 404.1513(d)).

ANALYSIS

1. Testimony of Vocational Expert

Plaintiff contends the ALJ failed to account for all of her physical and mental impairments in the hypothetical provided to the vocational expert. Plaintiff argues, based on the opinion of the medical advisor Dr. Mabee, that the vocational expert stated Plaintiff would not be employable. (Tr. at 632-634.) Plaintiff also contends the ALJ did not factor in her obesity. Defendant responds the ALJ correctly included Dr. Mabee's limitations when she limited Plaintiff to simple, repetitive tasks learned by demonstration instead of verbal instruction. (Tr. at 628.)

1 Defendant also contends there is no evidence Plaintiff's obesity
2 limited her beyond what the ALJ considered, including a limitation
3 to sedentary work with postural limitations.

4 With respect to mental limitations, the ALJ limited Plaintiff
5 to simple repetitive tasks learned by demonstration. (Tr. at 30.)
6 This conclusion was based on Dr. Mabee's testimony at both the
7 initial and supplemental administrative hearings. Although Dr.
8 Mabee testified Plaintiff would have moderate limitations in
9 concentration, persistence and pace (Tr. at 543), a limitation the
10 vocational expert later stated would preclude employment (Tr. at
11 633), Dr. Mabee clarified the moderate limitation as applying only
12 to complex or detailed tasks, rather than simple, repetitive work.
13 (Tr. at 502, 543, 554.) If limited to simple, repetitive tasks,
14 Plaintiff would have only a slight limitation in concentration,
15 persistence and pace. This ability is supported by Plaintiff's work
16 history at Keytronic (three years doing simple repetitive work (Tr.
17 at 569)), and the mental assessment by Drs. Gardner and Brown (Tr.
18 at 228). Based on an ability to perform simple, repetitive tasks,
19 the vocational expert stated Plaintiff would be employable. (Tr. at
20 630.)

21 The ALJ also noted Plaintiff suffered from severe obesity (Tr.
22 at 28) and imposed the following restrictions because of that
23 condition:

24 With respect to claimant's physical impairments
25 considering her orthopedic impairments and obesity, she
26 would not meet or equal Listing 1.00 et seq. The record
does not show any neurological deficits and she has the
ability to ambulate effectively. . . .

27 . . .

28 Accordingly, the undersigned finds the claimant retains

1 the residual functional capacity to perform sedentary
2 work, lifting and carrying 10 pounds occasionally;
3 standing and walking would be limited to two hours out of
4 eight hours and sitting for six hours out of 8 hours with
5 normal breaks. She could also occasionally bend, climb
and stoop, with no crouch, squat or kneel; and no work or
reach overhead. At 5'9" and weighing 295 pounds, the
claimant is obese and, to that extent, further restricted
in her movements as found herein.

6 (Tr. at 28, 30.) Additionally, the ALJ noted, despite her obesity
7 and mental limitations, Plaintiff was the primary care giver for her
8 five children, performed all household chores, shopped, attended
9 classes at a community college while participating in a work study
10 program, and participated in her children's school activities.
11 Additionally, she was able to work on her computer at home doing
12 graphic design and other activities. (Tr. at 28.) The ALJ's
13 findings are consistent with Dr. Peterson's opinion in July 2003
14 regarding the limitations imposed by Plaintiff's left knee condition
15 that Plaintiff could perform a full range of sedentary work with a
16 sit-stand option and the postural limitations noted in Dr.
17 Ashworth's notes. (Tr. at 487, 356.)

18 **2. Credibility**

19 Plaintiff contends the ALJ erred in her assessment of
20 credibility of Plaintiff's testimony. She notes there is objective
21 evidence of head trauma, knee impairment, depression, memory
22 impairment and obesity, all of which could be expected to produce
23 disabling pain and fatigue.

24 In deciding whether to admit a claimant's subjective symptom
25 testimony, the ALJ must engage in a two-step analysis. *Smolen v.*
26 *Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). Under the first step,
27 see *Cotton v. Bowen*, 799 F.2d 1403, 1405 (9th Cir. 1986), the
28 claimant must produce objective medical evidence of underlying

1 "impairment," and must show that the impairment, or a combination of
2 impairments, "could reasonably be expected to produce pain or other
3 symptoms." *Id.* at 1281-82. If this test is satisfied, and if there
4 is no evidence of malingering, then the ALJ, under the second step,
5 may reject the claimant's testimony about severity of symptoms with
6 "specific findings stating clear and convincing reasons for doing
7 so." *Id.* at 1284. The ALJ may consider the following factors when
8 weighing the claimant's credibility: "[claimant's] reputation for
9 truthfulness, inconsistencies either in [claimant's] testimony or
10 between [his/her] testimony and [his/her] conduct, [claimant's]
11 daily activities, [his/her] work record, and testimony from
12 physicians and third parties concerning the nature, severity, and
13 effect of the symptoms of which [claimant] complains." *Light v.*
14 *Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). If the ALJ's
15 credibility finding is supported by substantial evidence in the
16 record, the court may not engage in second-guessing. *See Morgan v.*
17 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999). If
18 a reason given by the ALJ is not supported by the evidence, the
19 ALJ's decision may be supported under a harmless error standard.
20 *Curry v. Sullivan*, 925 F.2d 1127, 1131 (9th Cir. 1990) (applying the
21 harmless error standard); *Booz v. Sec'y of Health and Human Serv.*,
22 734 F.2d 1378, 1380 (9th Cir. 1984) (same). Here, there is no
23 evidence of malingering; thus, the ALJ's reasons for rejecting her
24 testimony must be clear and convincing.

25 The ALJ noted:

26 The claimant's testimony concerning her impairments and
27 limitations is not fully credible. The objective medical
28 evidence as well as the testimony of the medical expert
does not support such debilitating limitations as the
claimant purports (i.e. an inability to do any work due

1 to her depression and memory problems). In July 2002, an
2 orthopedic report indicated that the claimant's bursitis
3 (left knee) should improve slowly and steadily. See
4 Exhibit 12F. The claimant (by self-report) is able to
5 successfully perform a full complement of activities of
6 daily living. In June 2003, the claimant reported to Dr.
7 Ashworth (see Exhibit 18F) that she sits at home and plays
8 with her computer doing "graphic design" and other
9 activities. She has a driver's license and she takes care
10 of her 5 children. She is able to drive, prepare meals
11 and cleans her home, vacuuming, sweeping, mopping, washing
12 dishes and laundry. She is able to shop for groceries,
13 household items and personal items. While she herself
14 does not belong to any clubs or groups, she does attend
15 teacher-parent conferences for her children as well as
16 their student holiday programs and sports events. She
17 attended community college taking digital imagery courses
18 and was on the honor roll numerous times between 1999 and
19 2002. This indicates an ability to attend and concentrate
20 as well as recall what has been taught. The undersigned
21 notes that the claimant has been prescribed Prozac for her
22 depression; however, she sometimes forgets to take this
23 medication. However, when on medication she reports
24 improvement. The claimant testified to needing to sleep
25 during the day, however, at Exhibit 4F/3 she reports that
26 she does not have time to nap during the day. Her
27 complaints of diarrhea in the written record were of short
28 duration and responded to medication/treatment. Other
inconsistencies in the record are also noted above in
discussing the medical record.

(Tr. at 28, 29, reference to some exhibits omitted.) These findings
are clear and convincing and supported by the record.

There was no objective evidence of head trauma; rather Dr.
Ashworth noted only a rule-out diagnosis. (Tr. at 359.)
Plaintiff's memory was noted to be intact (Tr. at 360), and Dr.
Mabee opined, based on neurological data, there was no evidence of
organic impairment. (Tr. at 503, 538.) The medical record further
evidences Plaintiff's depression was controlled and stabilized when
she remembered to take her medication. Plaintiff made inconsistent
reports to her treatment providers as to the extent of her injury in
the 1981 motor vehicle accident and the need for daycare following
the January 2002 accident. (Tr. at 24, 309, 357, 380-465.) The ALJ

1 also noted Plaintiff failed to participate fully in treatment,
2 including taking prescribed medication and attending counseling
3 sessions. (Tr. at 189-190, 249.)

4 The residuals from the knee condition and Plaintiff's obesity
5 were accommodated in the limitation to sedentary work with a
6 sit/stand option and postural limitations. Additionally, Plaintiff's
7 daily activities as a mother, housewife, and college student did not
8 reflect disability.

9 The ALJ did not err when she rejected Plaintiff's testimony as
10 not fully credible. Based on the medical record, the ALJ did not
11 err when she concluded Plaintiff could perform the sedentary work
12 described by the vocational expert. Accordingly,

13 **IT IS ORDERED:**

14 1. Plaintiff's Motion for Summary Judgment (**Ct. Rec. 11**) is
15 **DENIED.**

16 2. Defendant's Motion for Summary Judgment dismissal (**Ct. Rec.**
17 **15**) is **GRANTED**; the Complaint and claims are **DISMISSED WITH**
18 **PREJUDICE.**

19 3. The District Court Executive is directed to file this Order
20 and provide a copy to counsel for Plaintiff and Defendant. The file
21 shall be **CLOSED** and judgment entered for Defendant.

22 DATED January 24, 2006.

23
24 S/ CYNTHIA IMBROGNO
25 UNITED STATES MAGISTRATE JUDGE
26
27
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